

INDIANA COURT OF APPEALS
CASE AT A GLANCE



TORT LAW AND STATUTORY INTERPRETATION

Does Indiana's anti-SLAPP statute apply to the facts of this case and protect Prewett's website from Hamilton's defamation action?

Hamilton
v.
Prewett

Appeal from:
Daviness
Superior Court

The Honorable
Jim R.
Osborne,
Special Judge

**Oral
Argument:**
October 24,
2006
11:00 a.m. –
12:00 noon CT
30 minutes
each side

CASE SYNOPSIS

Facts and Procedural History

The parties in this case all reside in Daviess County. On June 21, 2002, Paul Hamilton filed a lawsuit against Morgan Prewett after Hamilton found a website titled "Paul Hamilten—The World's Smartest Man," which Hamilton contends defamed him and his water conditioning business. In his complaint, Hamilton alleges claims of defamation, intentional infliction of emotional distress, and punitive damages.

The website was written from the perspective of "Paul Hamilten," a man in the business of water conditioning, and portrayed "Hamilten" as a manipulative individual both personally and professionally. Excerpts from the website include:

I am a very intelligent, older American male and have my own very successful business dealing with the water conditioning field. I have a Master's Degree in Water Conditioning from Smartass University, a prestigious mail order college. While I am somewhat attractive, I am known for my ability to seduce women with my quick wit. I have several methods of attracting women as well as socializing skills, which are in the book I am writing

When my employees are installing a

unit at a place where their [sic] is a woman at home, I like to get the target alone and tell her that she doesn't have to "pay for this." A couple of winks and boom, you have another sucker hooked. Please note that this only works on women that have half a brain, the more intelligent ones.

On November 8, 2004, Prewett filed a summary judgment motion (*see Glossary*) asking the trial court to reject Hamilton's complaint because there were no questions of fact for the jury to decide. As designated evidence (*see Glossary*), Prewett listed the depositions of himself, his wife, and Hamilton; however, Prewett did not actually attach or refer to specific portions of these depositions. In the brief supporting his motion, Prewett only addressed the defamation claim and argued that it should be barred by Indiana's anti-SLAPP statute (*see Glossary*) because the website was made in furtherance of Prewett's right to free speech pursuant to the state and federal constitutions. Hamilton did not respond to Prewett's motion.

On February 28, 2005, the trial court heard oral argument on Prewett's motion and granted it in a one-paragraph order stating that Hamilton "failed to demonstrate the necessary elements for a cause of action of defamation against Defendant, Morgan Prewett, as a matter of law." Hamilton filed a motion to correct error with the trial court, but the trial court denied his motion on November 3, 2005.

*Hamilton v. Prewett***Case Synopsis (continued)**

Hamilton now appeals.

Parties' Arguments

I. Anti-SLAPP Statute

Hamilton and Prewett vehemently disagree over (1) whether Indiana's anti-SLAPP statute applies to this case, and (2) whether the trial court granted Prewett's motion pursuant to the anti-SLAPP statute or the trial rule governing summary judgment motions—Trial Rule 56.

On appeal, Hamilton argues that the trial court erroneously granted Prewett's summary judgment motion. Hamilton argues that Prewett's website is legally actionable because it defames him and his business, Hamilton Water Conditioning. He contends that Prewett's website is not protected by the anti-SLAPP statute because (1) Prewett has waived this argument, (2) Hamilton is not a public official or public person, (3) the website constitutes actionable defamation, and (4) the public does not have an interest in the

website merely because Prewett finds its content humorous. Hamilton also argues that the trial court granted Prewett's motion pursuant to Trial Rule 56 rather than the anti-SLAPP statute.

In response to Hamilton's arguments, Prewett contends that the trial court properly granted his summary judgment motion pursuant to the anti-SLAPP statute because the website is protected speech. Prewett argues that (1) the website is a form of comedy, parody, or satire, and the anti-SLAPP statute protects it because it is "a public issue or an issue of public interest," and (2) Hamilton's claim that the website defames his business puts the website within the protection of the anti-SLAPP statute because Hamilton's business is a matter of public concern.

Prewett further argues that even though the trial court's order granting his motion does not mention the anti-SLAPP statute, the trial court did grant his motion

Glossary of Terms

Tort: A non-criminal breach of a legal duty one person owes to another that results in a financial, emotional, or physical injury.

Motion: A request that the Court make a ruling or issue an order.

Summary Judgment: A procedural device to resolve a dispute without a trial when there is no issue as to the material facts that would determine the outcome and one party is entitled to judgment as a matter of law.

Designated Evidence: Evidence submitted to the Court along with the pleadings for resolution of a motion for summary judgment.

SLAPP: Strategic lawsuits against public participation (SLAPPs) are meritless lawsuits aimed at silencing a plaintiff's opponent or at diverting his resources away from the speech and toward the lawsuit.

Anti-SLAPP Statute: Ten-section statute adopted by Indiana in 1998 that aims to protect a speaker's right to free speech if the speech is "a public issue or an issue of public interest." Ind. Code § 34-7-7-1. The defendant is entitled to attorney's fees and costs if he can prove that the plaintiff's lawsuit was a SLAPP.

Case Synopsis (continued)

pursuant to the statute because Prewett's motion, brief, and oral argument all clearly argued for dismissal under the statute. Prewett argues that the anti-SLAPP statute required the motion to be treated as a motion for summary judgment but that the statute makes no further references to Trial Rule 56. Therefore, Prewett argues that the trial court granted his motion pursuant to the anti-SLAPP statute yet failed to refer to the statute in its order because of the statute's requirement that the motion be treated as a summary judgment motion.

II. Designated Evidence

Hamilton argues that the trial court erred in granting Prewett's motion because Prewett failed to designate evidence in accordance with Trial Rule 56. Hamilton emphasizes that Prewett's designation did not specify document page numbers and that Prewett failed to produce affidavits to support his motion. Therefore, Hamilton requests that we reverse the trial court's grant of summary judgment because Prewett's designated evidence did not comply with the specificity requirement of Trial Rule 56.

Prewett responds that the specifics of Trial Rule 56 do not apply to anti-SLAPP motions; therefore, the procedural requirement of designated evidence was not required. Additionally, Prewett argues that even if Trial Rule 56 did apply to his motion, he properly designated relevant materials through his

supporting brief; therefore, the trial court's grant of summary judgment was proper.

III. Defamation Claim

Hamilton argues that the trial court erred in granting Prewett's motion because Prewett did not demonstrate (1) the absence of an element in Hamilton's defamation per se claim or (2) that there were no material facts. Relying on his argument that Prewett did not properly designate evidence, Hamilton argues that Prewett did not present evidence to disprove any element of Hamilton's defamation claim. Therefore, Hamilton argues that the evidence before the trial court did not establish that Hamilton could not prove his defamation claim, and the trial court erroneously granted summary judgment.

Prewett argues that the website was not defamatory; therefore, the trial court properly granted his motion. Prewett cites numerous passages from the website to show that the average reader would not believe that the statements were actually factual assertions. Prewett argues that if the website is susceptible only to a non-defamatory meaning and is clearly understood to be parody, satire, humor, or fantasy, the speech is not legally actionable as a matter of law and the trial court properly granted his motion.



Opinion in this case expected:

By the end of
Calendar Year
2006

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TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989

John G. Baker is originally from Aurora in Dearborn County and now resides in Boone County. Previously he lived in Monroe County for 35 years. For the past 17 years, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of over 15,000 cases.

Judge Baker received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

For 27 years Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and for three years the School of Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989. Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, the Judge has been active in Boy Scouts of America since his youth.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. He has three adult sons.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 167th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Edward W. Najam, Jr. (Monroe County)

- Judge of the Court of Appeals since December 1992

Edward W. Najam, Jr. graduated from the Indiana University High School in Bloomington, where he grew up and still resides. He received his B.A. in political science, with highest distinction, from Indiana University, and his law degree from Harvard. As an undergraduate he was elected Student Body President, elected to Phi Beta Kappa, and received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership. After law school, Judge Najam returned to Bloomington and served as Administrative Assistant to Mayor Frank McCloskey for two years. For the next 18 years, Judge Najam maintained a general civil and trial practice. During that time he served on attorney advisory committees to the United States District Court for the Southern District of Indiana, was a member of the Bloomington Rotary Club, and was a Director and President of the Monroe County YMCA. Governor Evan Bayh appointed him to the Court of Appeals in 1992, and he was retained by the electorate in 1996. Since joining the Court, Judge Najam has served on the Indiana Supreme Court Rules Committee

and the Supreme Court Judicial Technology and Automation Committee, and he represents the Indiana judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council. In 2001 Judge Najam co-chaired the first national conference on the institutional role of state intermediate appellate courts, which was attended by judges from twenty-two states. Judge Najam is the author of "Public School Finance in Indiana: A Critique," published in the Indiana Law Journal, and "Caught in the Middle: The Role of State Intermediate Appellate Courts," published in the Indiana Law Review. As chair of the Appellate Practice Section of the Indiana State Bar Association, Judge Najam initiated "the appellate rules project" that culminated in a complete revision of the Indiana Rules of Appellate Procedure. Judge Najam lectures on appellate practice and has recently taught seminars on the rules for the admission of scientific evidence and litigation in public health emergencies. Judge Najam is a member of the American, Indiana and Monroe County Bar Associations and the ABA Appellate Judges Conference, is a member of Phi Delta Phi Legal Fraternity, is a Fellow of the Indiana and Indianapolis Bar Foundations, and is an Eagle Scout.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. L. Mark Bailey (Decatur County)

- Judge of the Court of Appeals since January 1998

L. Mark Bailey was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in January of 1998 and was retained on the Court by election in 2000. Before his appointment, Judge Bailey was a trial court judge, an administrative law judge, and a practicing attorney. He earned his B.A. from the University of Indianapolis in 1978; his J.D. from Indiana University School of Law at Indianapolis in 1982; and his M.B.A. from Indiana Wesleyan University in 1999.

During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He chaired the Local Coordinating Council of the Governor's Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution committee. He also served on the Board of Managers of the Indiana Judges Association and the Judicial Ethics Committee of the Indiana Judicial Center. Judge Bailey is Past-Chair of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation's Pro Bono

Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. His writings include, "A New Generation for Pro Bono," published in the *Indiana Lawyer* in 2006. He is also a certified civil mediator and a Master in the Indianapolis American Inn of Court.

A strong supporter of law-related education, Judge Bailey is currently a member of the Judicial Education Committee of the Judicial Conference of Indiana. He is also an adjunct professor at the University of Indianapolis and, in February of 2006, served as the Distinguished Jurist in Residence at Stetson University College of Law. In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings. Judge Bailey is also a frequent presenter at Indiana Continuing Legal Education seminars, and he regularly volunteers to judge law school trial advocacy and moot court competitions and to teach National Institute of Trial Advocacy programs.



ATTORNEYS FOR THE PARTIES

For Appellant, Paul Hamilton:

John R. Price

**John R. Price & Associates
Indianapolis**



A native of Indianapolis, **John R. Price** received his A.B. from Wabash College in 1963 and his J.D. from Indiana University School of Law in Indianapolis in 1968. He is an attorney specializing in corporate and banking law, school law, constitutional law and administrative law. He recently represented shareholders of the Indianapolis Power and Light Company (IPALCO) in class-action lawsuits against IPALCO and its officers and directors.

Mr. Price is Chairman of the Board of the Equal Justice Under Law Institute of Indiana, Inc., a non-profit group that focuses on legal cases involving educational and First Amendment issues, including religious discrimination and home school law matters. The Institute filed a successful lawsuit to allow voluntary prayer at Indiana's high school commencement ceremonies. He is also Chairman of the Board of Decency in Broadcasting, Inc., which petitioned the Federal Communications Commission to take action against WFBQ-FM in Indianapolis for indecent broadcast material. The FCC fined WFBQ after Decency in Broadcasting's petition.

Mr. Price is the Founding Chairman of the Board of the Carmel Bank & Trust Company, serving in that capacity in the mid-1970s. He also has a background in Indiana

Republican politics. He was a candidate for Indiana governor in 2000 and United States Senate in 1998 and served as Indiana's Deputy State Treasurer from 1967 to 1971. In 1968, he was Secretary of the Republican State Central Committee, coordinating state campaigns. From 1966 to 1967, Mr. Price was the campaign coordinator for the Republican State Central Committee in the statewide campaigns for Secretary of State, Treasurer of State and Auditor of State. From 1965 to 1966, he was the Assistant Campaign Manager for the Lt. Governor Ristine for Governor Committee.

Mr. Price formerly taught Business Law at Indiana Wesleyan University in Indianapolis and is the recipient of numerous educational and professional awards and a member of many professional associations and clubs. His volunteer community activities include Chairman of the Board of the Hamilton County Hospital Authority, a member of Grace Community Church in Carmel, former teacher of two weekly Indianapolis business and professional Bible studies (one for 25 years), and in May 1980, he was the Chairman of the Laymen's Committee of the Central Indiana Billy Graham Crusade.

ATTORNEYS FOR THE PARTIES

For Appellee, Morgan Prewett:

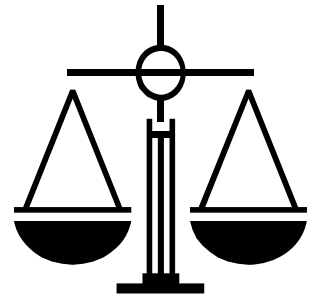
Blake Chambers
Waller Chambers & Hanson
Washington, Indiana

Blake Chambers is a 1971 graduate of Vincennes University, where he was active in the theater program and performed in numerous plays and musicals. Two years after graduation, he earned a degree from Western Kentucky University, and then graduated from the Indiana University School of Law at Indianapolis in 1977. He has spent his entire career with his current firm, Waller, Chambers and Hanson in Washington, Indiana, his home town.

Mr. Chambers is a member of the American Bar Association, the Indiana State Bar Association and the Daviess County Bar Association. He is

admitted to practice before the Indiana Supreme Court, the United States District Court for Southern Indiana, and the United States Court of Appeals for the Seventh Circuit.

Mr. Chambers' firm engages in the general practice of law. He handles both civil and criminal trials, family law matters, real estate, probate, estate planning, and general business law.



AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus briefs filed in this case.